

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 30, 2003

IN RE:

IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S
TRIENNIAL REVIEW ORDER – 9 MONTH
PROCEEDING – LOOP AND TRANSPORT

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DOCKET NO.
03-00527

INITIAL PRE-HEARING ORDER ESTABLISHING PROCEDURE

The Hearing Officer in this Docket enters the following *Initial Pre-Hearing Order Establishing Procedure* (the “Order”) governing procedures in the above-styled Docket for (1) service of all pleadings, discovery and responses, testimony, briefs and other required filings; and (2) discovery, including but not limited to, interrogatories, requests for production of documents, requests for admissions, depositions. Any issue regarding these matters that is not addressed in this *Order* will be governed by the rules of practice and procedure for the Tennessee Regulatory Authority (the “TRA” or “Authority”).

(1) **Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.**

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

- (A) All filings required to be made to the TRA shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the TRA, on the dates specified by the TRA and in the manner such filings are ordinarily made; provided, however, that unless the TRA specifically orders otherwise with regard to a particular filing or submission, the Parties may hand deliver the original, four (4)

paper copies and one (1) CDROM (Pdf format) for any required pleading to the TRA by 11 a.m. on the day following the date the filing was due.¹

- (B) Every Party to this proceeding shall provide every other Party with an email address of a person who shall be authorized to receive service copies for that Party of all filings that have to be filed at the TRA or otherwise served on the Parties. If the person authorized to receive service for any Party changes, that Party shall be responsible for notifying all other Parties of such change. For any Party who has already intervened in this proceeding and who has not provided such an email address, such Party shall do so promptly, and in no event less than 10 days following the date of this order. Failure to provide such an address shall excuse any Party from any alleged failure to serve the Party who has failed to provide the appropriate email address.
- (C) For the purpose of this proceeding, where a responsive submission is made, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other Parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the Party to whom the request is made receives the request; provided that if the filing is served electronically and is received after 4 p.m., the filing shall be treated as if it were served and received on the next business day following the date on which the electronic filing was received. The Parties are admonished to (1) request "receipt" and "read" indicators for all emails to insure that they are delivered and received in a timely manner and (2) to insure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the Parties, each Party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.
- (D) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, each Party can elect, for non-confidential materials, to create and maintain a publicly accessible website where any such filing can be posted. If a Party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other Parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents.
- (E) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the Parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the TRA,

¹ Due to the voluminous nature of Interrogatories, Requests to Produce Documents, Requests for Admissions and other discovery, these items and the respective responses may not be available on the TRA's web site but will be available in the TRA's Docket Room.

the Parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The TRA will not entertain disputes involving a question of whether a filing was made timely unless the aggrieved Party can demonstrate that it has been substantially prejudiced.

- (F) Where a Party receives an electronic copy of a document, the Party can request a paper copy of the document, but the responding Party shall have one week after the request is made to furnish the paper copy.

(2) **Discovery**

- (A) Third-Party Discovery – In the interest of creating a comprehensive evidentiary record, Discovery Requests, as delineated below, will be served on non-intervening telecommunications service providers through the subpoena power of the TRA pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.13.

- (B) Interrogatories, Requests to Produce Documents, Requests for Admissions.

- (i) Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a Party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the requirements of a protective order entered in this Docket and any evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from TRA orders to a court of competent jurisdiction or the FCC, subject to normal rules applying to the admission of evidence.
- (ii) The Parties shall respond, except as otherwise provided, to Interrogatories, Requests to Produce and Requests for Admissions according to the *Order Establishing Procedural Schedule* issued by the Hearing Officer on October 27, 2003.
- (iii) If a Party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the Parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, subject to the approval of the Hearing Officer, given the circumstances that exist at the time. In resolving such issues, the Parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the TRA for resolution. Again, should a Party seek the TRA's intervention in such a dispute, the complaining Party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv) Objections to Discovery.

(a) Informal Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

1. Legal Objections;
2. Objections to the time required for the production of region-wide discovery responses, in which event the objecting Party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

(b) Where objections are made pursuant to (2)(A)(iv)(a)(1), the objecting Party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, subject to the approval of the Hearing Officer, and the responding party will engage in its best efforts to respond as quickly as possible.

(c) Where objections are made pursuant to (2)(A)(iv)(a)(2), the Parties shall agree upon a time frame and/or date certain for responses, subject to the approval of the Hearing Officer, and the responding Party will engage in its best efforts to respond as quickly as possible.

(v) Where the parties are unable to informally resolve a discovery dispute as outlined in the proceeding sections, the Parties shall seek rulings on any discovery dispute from the Hearing Officer according to the *Order Establishing Procedural Schedule*.

(C) Depositions

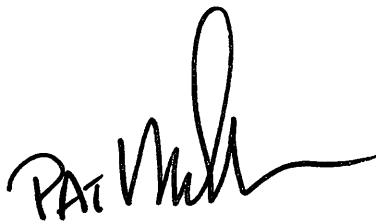
(i) Depositions of employees, consultants, contractors and agents may be taken pursuant to the ordinary rules of practice and procedure before the TRA, including any objections that may be raised.

(ii) Depositions of persons whom the Parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:

(a) Any Party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:

1. direct testimony; and

2. rebuttal testimony; and
 3. surrebuttal testimony.
- (b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the TRA, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, (2) by any Party to this proceeding that was not a party to the proceeding in which the deposition was taken, or (3) by any Party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.
- (c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.
- (d) The purpose of these deposition requirements is to conserve the resources of the Parties, and to encourage the Parties to work jointly and cooperatively to conduct necessary discovery.
- (e) If the Parties have a dispute regarding the taking of depositions in any particular situation, the Parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the Parties should be prepared to present a very brief explanation of the dispute and the aggrieved Party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing Party.

A handwritten signature in black ink, appearing to read "Pat Miller", with a long horizontal flourish extending to the right.

Pat Miller, Director
as Hearing Officer